IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.3043 OF 2004

Union of India & anr. Petitioners

vs.

Mr.Shailesh Damodia & anr. Respondents

Mr.R.V.Desai with Mr.Rajiv Chavan i/b. Mr.T.C.Kaushik for the petitioners.

Mr.V.S. Nankani i/b. Mr.N.S.Thackar for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 29th November 2004

P.C.

The consignment of streptomycin sulphate and amikacin sulphate was ordered to be confiscated by the Commissioner under the provisions of clause (d) of Section 111 of the Customs Act, 1962. The confiscated goods were ordered to be redeemed on payment of fine. The Commissioner also imposed penalty under Section 112 of the Customs Act. Aggrieved by the order of Commissioner of Customs, the respondent herein preferred appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Mumbai. The Tribunal by its decision dated 26.11.2001 set aside the order of Commissioner and held that there was no basis for confiscation of the goods and the imposition of

penalty. The Revenue has filed the reference application before this Court and the said reference application is said to be pending before this Court. Going little backwards it may be noticed that initially the revenue made a miscellaneous application before the Tribunal for staying the operation of the order dated 26.11.2001 during the pendency of the reference application. By the order dated 27.08.2002 the prayer of stay application was rejected. Despite the fact that the revenue's application for stay was rejected by the Tribunal, the revenue did not comply with the order dated 26.11.2001. That necessitated an application being made by the respondent herein before the Tribunal for direction to the revenue for implementation of the order dated 26.11.2001. By its order dated 19.05.2003 the Tribunal directed the revenue to implement the order dated 26.11.2001 forthwith. The revenue yet did not implement the order and instead made another application before the Tribunal praying therein that order be passed by the Tribunal for destruction of the goods confiscated and to stay penal liabilities. This application has been rejected by the Tribunal by the order dated 02.12.2003 giving rise to the present writ petition.

2. The facts aforestated would point out that the revenue is not implementing the order of the Tribunal dated 26.11.2001 on one pretext or the other, particularly the pendency of reference application. The

conduct of the revenue is not fair. As already indicated above, during the pendency of reference application, the revenue made an application before the Tribunal for staying the operation of the order dated 26.11.2001. The said application was rejected on 27.08.2002. That order was not challenged. The revenue ought to have implemented the order dated 26.11.2001 once its stay application was rejected by the Tribunal. They did not and the respondent was compelled to file application before the Tribunal for direction to the revenue to implement the order dated 26.11.2001. The Tribunal on 19.05.2003 passed an order directing the revenue to implement the order dated 26.11.2001. The revenue did not challenge the said order nor implemented the order dated 26.11.2001 but instead made yet another application for stay and destruction of goods. We are of the view that in the light of the earlier orders passed by the Tribunal on 27.08.2002 and 19.05.2003, the second application made by the revenue was misconceived and liable to be rejected. We, accordingly, do not deem it fit to entertain the writ petition.

3. Writ petition is, accordingly, dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)